TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 126.

MARTHA S. MUNSEY, PLAINTIFF IN ERROR,

vs.

M. SWAIN CLOUGH, SHERIFF OF MERRIMACK COUNTY.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF NEW HAMPSHIRE.

FILED OCTOBER 14, 1904.

(19,091.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the superior court of the State of New Hampshire, holden at Concord, within and for the county of Merrimack, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the State of New Hampshire in which a decision could be had in the writ of *habeas corpus* between Martha S. Munsey, of Pittsfield in said county of Merrimack, plaintiff and M. Swain Clough, sheriff of said Concord, defendant, in a *habeas corpus* proceeding wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Martha S. Munsey as by her complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom- of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 8th day of September, in the year of our Lord one thousand nine hundred and three.

BURNS P. HODGMAN,
Clerk of the Circuit Court of the United States,
District of New Hampshire.

Allowed by
ROBERT M. WALLACE,
Chief Justice of the Superior Court of the
State of New Hampshire.

2 [Endorsed:] Martha S. Munsey *vs.* M. Swain Clough Writ of error Filed this 8th day of September 1903 A. J. Shurtleff clerk superior court

STATE OF NEW HAMPSHIRE, *Merrimack*, } *ss.*:

And now, here, the judges of the superior court make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I A. J. Shurtleff clerk of said superior court have hereto set my hand and the seal of said court this sixth day of October A. D. 1903.

[Seal Superior Court, New Hampshire.]

A. J. SHURTLEFF, *Clerk*.

3 STATE OF NEW HAMPSHIRE, *Merrimack*, } *ss.*:

At the superior court holden at Concord within and for the county of Merrimack aforesaid, on the first Tuesday of April in the year of our Lord one thousand nine hundred and three.

4 To Honorable Charles F. Stone, justice of the superior court:

Respectfully represents your petitioner, Martha S. Munsey that she is at Concord, in our county of Merrimack, illegally restrained of her liberty by M. Swain Clough, sheriff of the county of Merrimack who claims to hold your petitioner by virtue of an arrest made in pursuance of an executive warrant issued by the governor of the State of New Hampshire on a requisition from the governor of Massachusetts, reciting that your petitioner stands charged by indictment in said latter State with the crime of uttering forged wills committed in the county of Middlesex on the 28th day of February A. D. 1895; on the 17th day of May A. D. 1895, and on the 20th day of November A. D. 1901 and was a fugitive from the justice of the latter State.

Your petitioner avers that she is illegally restrained of her liberty because the proceedings and process upon which the executive warrant was issued by the governor of the State of New Hampshire are irregular and defective and the evidence filed in support thereof is insufficient the documentary evidence contradictory and, assuming all the evidence to be true, is not sufficient to warrant the extradition of your petitioner.

Second. That upon the proceedings filed in the application to the governor upon which the warrant was issued, it appears, and upon evidence to be submitted to the court in a hearing upon the writ of *habeas corpos* prayed for in this petition, it will also conclusively appear that your petitioner is not a "fugitive from justice" within the meaning of that term as used in the Constitution and the acts of Congress relating thereto.

Third. That your petitioner is not a "fugitive from justice."

Fourth. Because the governor of the State of New Hampshire upon the hearing on the application for the issue of said executive warrant, declined and refused to hear or consider any evidence from your petitioner, or in behalf of your petitioner, upon the question of whether she was a "fugitive from justice" or upon any other question, and ruled that the only evidence which he would consider and upon which he based the issuance of said warrant was the documentary evidence offered and filed in support of the requisition made by the governor of Massachusetts.

Fifth. Because the only evidence considered by the governor of the State of New Hampshire, upon which he issued the warrant on the aforesaid requisition was documentary evidence filed in support of the requisition of the governor of the Commonwealth of Massachusetts and because he refused and declined to hear any evidence, either documentary or oral offered in behalf of your petitioner.

Wherefore your petitioner prays for a writ of *habeas corpus* and that the same may issue to said M. Swain Clough ordering him to have the body of your petitioner before your honor that she may be released from restraint and granted her liberty, and for such other relief as may be just.

MARTHA S. MUNSEY.

MERRIMACK, *ss*:

MARCH 5, A. D. 1902.

Subscribed and sworn to before me,

EDWARD A. LANE,
Justice of the Peace.

[L. S.]

STATE OF NEW HAMPSHIRE, *Merrimack*, } *ss*:

To M. Swain Clough, sheriff of Merrimack county:

We command you that the body of Martha S. Munsey by you imprisoned and restrained of her liberty, as is said together with the day and causes of taking and detaining of the said Martha S. Munsey by whatever name the said Munsey may be called you have before me Charles F. Stone justice of the supreme court at the office of Sargent, Niles & Morrill No. 60 No. Main St. in Concord in said county, on Saturday the 15th day of February A. D. 1902 at ten

o'clock in the forenoon to undergo and receive what shall by me then and there be considered of her in this behalf; and have you then and there this writ.

Witness my hand and seal at Concord, N. H. this eighth day of March in the year nineteen hundred and two.

CHARLES F. STONE,
Associate Justice of the Superior Court.

STATE OF NEW HAMPSHIRE, *Merrimack,* } *ss.:*

MAR. 15, 1902.

To Mr. Justice Stone:

I have here in court the within named Martha S. Munsey, who is now in my custody under a warrant from the governor of New Hampshire on the requisition of the governor of Massachusetts to arrest said Martha S. Munsey & deliver her to Jophanus H. Whitney, as the duly authorized agent of the Commonwealth of Massachusetts; and she has so been in my custody since March 4, 1902, when I received said warrant, a copy of which is hereto annexed.

M. SWAIN CLOUGH, *Sheriff.*

MERRIMACK, *ss.:*

APR. 15, 1902.

Subscribed and sworn to before me

JOHN M. MITCHELL,
Justice of the Peace.

7 STATE OF NEW HAMPSHIRE:

[L. S.] Chester B. Jordan, governor.

The governor of the State of New Hampshire to M. Swain Clough and the sheriffs, under sheriffs, and other officers of and in the several cities and counties of this State:

Whereas, it has been represented to me by the acting governor of the Commonwealth of Massachusetts that Martha S Munsey stand-charged with the crime of uttering forged wills which he certifies to be a crime under the laws of said Commonwealth committed in the county of Middlesex in said Commonwealth, and that she has fled from justice in said Commonwealth and has taken refuge in the State of New Hampshire, and the said governor of Massachusetts having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said Martha S. Munsey to be arrested and delivered to Jophanus H. Whitney who is duly authorized to receive her into his custody and convey her back to the said — of Massachusetts.

And whereas, the said representation and demand is accompanied by certified copy of an indictment whereby the said Martha S. Munsey — shown to have been duly charged with the said crime and with having fled from said Commonwealth and taken refuge in the State of New Hampshire, which is duly certified by the said acting governor of Massachusetts to be authentic and duly authenticated.

Wherefore, you are required to arrest and secure the said Martha S. Munsey wherever she may be found within the State and afford her such opportunity to sue out a writ of *habeas corpus* as is prescribed by the laws of this State, and to thereafter deliver into the custody of the said Jophanus H. Whitney to be taken back to the said Commonwealth from which she fled, pursuant to the said requisition; and also to return this warrant and make return to the governor of New Hampshire, within thirty days from the date hereof, of all your proceedings had thereunder and of all facts and circumstances relating thereto.

Given under my hand and the seal of the State, at the capitol,
8 in Concord, this 4th day of March in the year of our Lord one thousand nine hundred and two.

By the governor:

EDWARD N. PEARSON,
Secretary of State.

9 STATE OF NEW HAMPSHIRE, *Merrimack*, } *ss.*

To the Honorable Charles F. Stone, associate justice of the superior court:

In re MARTHA S. MUNSEY.

The petitioner in the above entitled action moves that she be discharged and assignes the following causes:

1. That the indictment upon which the requisition papers were issued by the governor of Massachusetts and upon which the warrant for extradition was issued by the governor of New Hampshire, contains three counts alleging three several and distinct felonies, and that by her arrest upon said warrant your petitioner is deprived of her liberty without due process of law in violation of the provisions of the first clause of the fourteenth amendment to the Constitution of the United States.

2. That under said indictment the petitioner is arrested, imprisoned and deprived of her liberty in a manner other than by the law of the land and is held to answer for a crime or offense which is not fully and plainly, substantially and formerly described to her, in violation of the provisions of article 15 of the constitution of New Hampshire, and the corresponding article of the constitution of Massachusetts, and is also deprived of the rights guaranteed to her by article 14 of the constitution of New Hampshire, in that, if obliged to proceed to introduce evidence at this time to secure her

discharge upon the several charges upon which she is held, she would not enjoy that certain remedy, conformably to the laws, for the injuries which she has received in her person, to which remedy she is entitled by said article 14.

MARTHA S. MUNSEY,
By her attorneys, EDWARD A. LANE,
SARGENT, NILES & MORRILL.

Filed Mar. 17, 1902.

10 At the April term 1902 the parties appeared and the court made the following findings of fact, ruling and order:—

11 MERRIMACK, *ss:*

Superior Court, April Term, 1902.

STATE *ex Relatione* MARTHA S. MUNSEY
v.
M. SWAIN CLOUGH.

Habeas corpus, against the sheriff of Merrimack county. Writ dated March 8, 1902. Hearing before Stone J., March 15, 1902. The defendant's return was as follows:

STATE OF NEW HAMPSHIRE, *Merrimack*, *ss:*

MARCH 15, 1902.

To Mr. Justice Stone:

I have here in court the within named Martha S. Munsey, who is now in my custody under a warrant from the governor of New Hampshire, on the requisition of the governor of Massachusetts, to arrest said Martha S. Munsey and deliver her to Jophanus H. Whitney, as the duly authorized agent of the Commonwealth of Massachusetts; and she has so been in my custody since March 4, 1902, when I received said warrant, a copy of which is hereto annexed.

M. SWAIN CLOUGH, *Sheriff.*

A copy of the warrant of the governor of New Hampshire was annexed to the return. By this warrant it appears that the relator stands charged by indictment in the county of Middlesex and Commonwealth of Massachusetts with the offense of "uttering forged wills," and that her surrender as a fugitive from justice is requested by the governor of Massachusetts. The requisition papers, which were put in evidence, contain a certified copy of the indictment, which, with the certificate, is as follows:

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *To wit:*

At the superior court, begun and holden at Cambridge, within and for the county of Middlesex, on the second Monday of February in the year of our Lord one thousand nine hundred and two.

The jurors for the Commonwealth of Massachusetts on their oath present, that Martha S. Munsey, on the twenty-eighth day of February in the year of our Lord one thousand eight hundred
12 and ninety-five, at Cambridge, in the county of Middlesex aforesaid, with intent to injure and defraud, did utter and publish as true, a certain forged instrument purporting to be a will, well knowing the same to be forged, which said instrument is of the tenor following, that is to say:

In the name of God I Samuel Welch of Lowell in the county of Middlesex & in the State of Massachusetts being weak in body but of a Sound mind and Good memory for which I have to praise before God do make publish and declare this my last will and testament and havin disposed of all my worldly estate in mamer following to wit

First I order and direct my Executors having named to pay my just debts and funaral charges as may be after my decease

Second I give and bequeath to my brother Johnothan the homestead place upon which he now live

Third I give and bequeath unto my beloved neases Jennie Davis of Lowell Mass and Martha Monsy of Pittsfield, N. H. and Minie Davis of Maine all of my Real estate where it may be found.

Fourth. i give and bequeath unto Jennie Davis and Martha Monsy and Minie Davis all my personal estaits and of evry discription whatsoever after the payment of my funeral expenses

Lastly i do hereby appoint the oldest of the three exechtrix of thris my last will & testament hereby revoking all former wills maid by me In writiness whereof I have hereby set my hand and seal this the twenty-six day of December in the year of our Lord one thousand eight hundred and seventy six ——

SAMUEL WELCH [SEAL]

Signed and sealed published and declared by me the said Samuel Welch as and for my last will and testamend in presants of these three witnesses ther to

E. G. CAMPBELL
HENRY A. BLAKE
C. H. GREEN

And the jurors aforesaid do further present that at no time since the commission of the offence herein set forth has said Martha S.

Munsey been usually and publicly a resident in said Commonwealth of Massachusetts.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid for the Commonwealth of Massachusetts on their oath aforesaid do further present, that the said Martha
13 S. Munsey, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-five, at Cambridge, in the county of Middlesex aforesaid, with intent to injure and defraud, did utter and publish as true a certain forged instrument purporting to be a will, well knowing the same to be forged, which said instrument is of the tenor following, that is to say:

I in the name of god I Samuel Welch of Lowell in the county of Middlesex and in the State of Massachusetts being weak in body but of a Sound mind and memory of which i thank god do make publish and declare this my last will and testament and herein Dispose of all my worldly estates in Måner following to wit:

(first) i order and direct my Executors having named to pay my just dets and fruneral charges as may be after my Decease.

(second) i give and bequeath to my Brother Johnathan and homestead upon which he now livs.

(third) i give and bequeath unto my beloved neases Jennie Davis of Lowell and Martha Munsy of Pittsfield and Minie Davis of Maine all of my Real estates whersoever it may be found

(fourth) i give and bequeath unto Jennie Davis and Martha Munsy and Minie Davce all my Bonds and personal property of evry discription whatsoever after the payment of my frunaral expenses

(lastly) i do hereby appoint the oldest of three ho are liveing executor of this my last Will and testament hereby revoking all former Wills maid by me in Witnesses Whereof i have hereby set my hand and seal this the tenth day of May A. D. 1879

SAMUEL WELCH [SEAL]

Signed and sealed published and declared by me the said Samuel Welch as and for my last Will and testament in the presants of these three witnesses ther to.

E. G. CAMPBELL
C. H. GREEN
EDAWINE DOW

And the jurors aforesaid do further present that at no time since the commission of the offence herein set forth has said Martha S. Munsey been usually and publicly a resident of said Commonwealth of Massachusetts.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

14 And the jurors aforesaid for the Commonwealth of Massachusetts on their oath aforesaid do further present, that Martha S. Munsey, on the twentieth day of November, in the year of our Lord one thousand nine hundred and one, at Cambridge, in the county of Middlesex aforesaid, with intent to injure and defraud, did utter and publish as true a certain forged instrument purporting to be a will, well knowing the same to be forged, which said instrument is of the tenor following, that is to say:

I Samuel Welch of Lowell in the State of Massachusetts and County of Middlesex Being of poor health But of sound Mind Do make and Declare this to Be my last Will and testament as follows:
first I give and Devise and bequeath Unto the Widow Ebben Welch her lifetime the home on which she is now living of which I hold a mortgage and after her Death it is to be Divided With Jennie Davis, and Minie Davis and Martha Moncy.
Sectond I give and Devise and Bequeath Unto Jennie Davis of Lowell and Minie Davis Maine and Martha Moncy of Pittsfield all my Real Estate and all my personal property and all my Bonds of which will be in my house locked up in a desk
third I give and devise and Bequeath Unto my Brother Jonathan the Farm on which he now livs of which I hold a mortgage of
fourth I appoint as Executor the Oldest one living I further direct that my funeral Expenses shall be paid from money now on Deposit in the Warren institution Charlestown
lastly in Witness Whereof I place my hand and Seal this the 17 day of June 1886
Signed Sealed and acknowleged By the Said Samuel Welch as his last Will and testament in the presence of us Who in his presence and at his request and in the presence of Each other have Signed our Names hereunto as Witness thereof

HELEN S. CHANDLER
E. G. CAMPBELL
EDWIN DOW
C. H. GREENE

15 Against the peace of said Commonwealth, and contrary to the form of the statutes in such case made and provided.

A true bill.

JAMES G. HILL,
Foreman of the Grand Jury.

GEORGE A. SANDERSON,
District Attorney.

The foregoing indictment was found and returned into said superior court, by the grand jurors at the term thereof, held at Cambridge, within and for said county, on the second Monday of February, A. D. 1892, and ordered to be filed, and that a warrant issue

for the arrest of the said Martha S. Munsey, that she may be had before said court to answer to said indictment.

And now Walter C. Wardwell, deputy sheriff, the officer charged with the service of said warrant, comes into court with said warrant and makes return thereon, that he has made diligent search for the said Martha S. Munsey, and cannot find *him* within his precinct, and therefore returns said warrant without service. All of which appears of record in said court.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Cambridge aforesaid, this twenty-fourth day of February, A. D. 1892.

THEO. C. HURD, *Clerk.*

The requisition papers also contain an affidavit that the relator is a fugitive from justice, and has taken refuge in this State, as follows:

COMMONWEALTH OF MASSACHUSETTS, *Middlesex,* } *ss:*

I, Jophanus H. Whitney of Medford in the county of Middlesex and said Commonwealth, on oath depose and say that Martha S. Munsey who stands charged by indictment with the crime of uttering forged wills as is more fully set forth in the papers hereto annexed, has fled from the limits of said Commonwealth and is a fugitive from justice. And I further depose that at the time of the commission of said crime she was in the State of Massachusetts
16 in the county of Middlesex of said Commonwealth, and that at the same time and previous thereto she was a resident of Cambridge in the said county of Middlesex; that she fled from said Commonwealth of Massachusetts on or about the fourth day of November, A. D. 1901; that she is not now within the limits of the Commonwealth, but, as I have reason to believe, is now in Pittsfield, in the State of New Hampshire. The grounds of my knowledge are that I have interviewed her since the fourth of November last in Pittsfield, New Hampshire, where she was living with her husband during the last week January last.

JOPHANUS H. WHITNEY.

Then personally appeared the above named Jophanus H. Whitney before me and made oath that the foregoing affidavit by him subscribed is true, this twenty-first day of February, A. D. 1902.

WALTER C. WARDWELL,
Justice of the Peace.

The requisition papers also contain a certificate from the district attorney, George A. Sanderson, reading in part as follows:

"Martha S. Munsey, who stands charged by indictment with the crime of uttering forged wills, committed in the county of Middle-

sex, on the twenty-eighth day of February, A. D. 1895; on the 17th day of May, A. D. 1895, and on the 20th day of November, A. D. 1901, and who to avoid prosecution fled from the jurisdiction of this Commonwealth and is now a fugitive from justice, and as I am informed is within the jurisdiction of said State of New Hampshire.

"And I further certify that the offence charged against the said fugitive is a felony and that said offence and punishment therefor is defined in section 1 of chapter 204 of the Public Statutes.

"Application for the arrest and return of the said fugitive has not been sooner made because the indictment was not found by the grand jury until the February sitting of the superior court in the year 1902.

"GEORGE A. SANDERSON,
"*District Attorney for Northern District.*"

The defendant excepted to the admission in evidence of the requisition papers, as constituting a review of the action of the executive.

The relator then made the following motion:

17 STATE OF NEW HAMPSHIRE, *Merrimack*, } ss:

In re MARTHA S. MUNSEY.

To the Honorable Charles F. Stone, associate justice of the superior court:

The petitioner in the above entitled action moves that she be discharged and assigns the following causes:

1. That the indictment upon which the requisition papers were issued by the governor of Massachusetts and upon which the warrant for extradition was issued by the governor of New Hampshire, contains three counts alleging three several and distinct felonies, and that by her arrest upon said warrant your petitioner is deprived of her liberty without due process of law, in violation of the provisions of the first clause of the fourteenth amendment to the Constitution of the United States.

2. That under said indictment the petitioner is arrested, imprisoned and deprived of her liberty, in a manner other than by the law of the land, and is held to answer for a crime or offence which is not fully and plainly, substantially and formally described to her, in violation of the provisions of article 15 of the constitution of New Hampshire, and the corresponding article of the constitution of Massachusetts; and is also deprived of the rights guaranteed to her by article 14 of the constitution of New Hampshire, in that, if obliged to proceed to introduce evidence at this time to secure her discharge upon the several charges upon which she is held, she would not enjoy that certain remedy, conformably to the laws, for

the injuries which she has received in her person, to which remedy she is entitled by said article 14.

The laws and constitution of the State of Massachusetts and the Constitution of the United States may be referred to as a part of the case.

MARTHA S. MUNSEY,
By her attorneys, EDWARD A. LANE,
SARGENT, NILES & MORRILL.

Upon this motion the court made the following ruling: "Motion denied, that the case may be transferred to the supreme court for their decision."

To this ruling the relator duly excepted.

CHARLES F. STONE,
Associate Justice Superior Court.

[Endorsed:] Merrimac. Case. State *ex rel.* Munsey *v.* Clough. Edward A. Lane. Sargent, Niles & Morrill. Mitchell & Foster.

18 Said case was transferred to the 1902 term of the supreme court of the State of New Hampshire and the action was continued to the October term of this superior court, at which term the parties appeared. On the 27th day of December 1902 the said supreme court filed the following opinion in said case:

19 DEC. 27, 1902.

MERRIMACK, *ss:*

STATE (*ex Rel.* MUNSEY)
v.
CLOUGH.

Habeas corpus. Trial before Stone, J., and case transferred from the April term, 1902, of the superior court.

The defendant, who is the sheriff of the county, states in his return that he has the custody of the relator under a warrant from the governor of this State, issued on the requisition of the governor of Massachusetts. The warrant recites that "it has been represented to me by the acting governor of the Commonwealth of Massachusetts that Martha S. Munsey stands charged with the crime of uttering forged wills which he certifies to be a crime under the laws of said Commonwealth, committed in the county of Middlesex in said Commonwealth, and has taken refuge in the State of New Hampshire, and the said governor of Massachusetts having, in pursuance of the constitution and laws of the United States, demanded of me that I shall cause the said Martha S. Munsey to be arrested and delivered to Jophanus H. Whitney, who is duly authorized to receive her into his custody and convey her back to the said Common-

wealth of Massachusetts. And whereas, the said representation and demand is accompanied by certified copy — an indictment, whereby the said Martha S. Munsey is shown to have been duly charged with the said crime and with having fled from said Commonwealth and taken refuge in the State of New Hampshire, which is duly certified by the acting governor of Massachusetts to be authentic and duly authenticated: Therefore, you are required to arrest and secure the said Martha S. Munsey wherever she may be found within this State, and afford her such opportunity to sue out a writ of *habeas corpus* as is prescribed by the laws of this State, and to thereafter deliver her into the custody of the said Jophanus H. Whitney to be taken back to the said Commonwealth from which she fled, pursuant to the said requisition."

From the copy of the indictment referred to, it appears that the relator was indicted by the grand jury of the county of Middlesex, in Massachusetts, on the second Monday of February, 1892, in which it is charged that the relator, on February 28, 1895, "at Cambridge in the county of Middlesex aforesaid, with intent to injure and defraud, did utter and publish as true, a certain forged instrument purporting to be a will, well knowing the same to be forged." In the second and third counts she is charged with similar offences committed respectively on May 17, 1895, and November 20, 1901. In each count the alleged forged will is set out in full.

20 In the certificate of the clerk of the court in which the indictment is pending, it is stated that the indictment was found and returned "on the second Monday of February, A. D. 1892." The requisition papers also contain the affidavit of Whitney, in which it is stated that the relator has "fled from the limits of said Commonwealth and is a fugitive from justice;" also that "at the time of the commission of said crime she was in the State of Massachusetts; * * * that she fled from said Commonwealth of Massachusetts on or about the fourth day of November, A. D. 1901; that she is not now within the limits of the Commonwealth, but, as I have reason to believe, is now in Pittsfield, in the State of New Hampshire."

The affidavit of the district attorney was submitted to the governor, in which he refers to Martha S. Munsey as one "who stands charged by indictment with the crime of uttering forged wills, committed in the county of Mlddlesex, on the 28th day of February, A. D. 1895, on the 17th day of May, A. D. 1895, and on the 20th day of November, A. D. 1901, and who to avoid prosecution fled from the jurisdiction of this Commonwealth and is now a fugitive from justice, and, as I am informed, is within the jurisdiction of said State of New Hampshire. And I further certify that the offence charged against the said fugitive is a felony, and that said offence and punishment therefor is defined in section 1 of chapter 204 of the Public Statutes. Application for the arrest and return of the said fugitive has not been sooner made because the indictment was

not found by the grand jury until the February sitting of the superior court in the year 1902."

The relator claiming that on the face of the documents submitted to the governor he was not authorized to issue his warrant, and that the warrant is defective, made a motion for her discharge, which was denied, subject to exception.

Edward A. Lane and Sargent, Niles & Morrill, for the relator.

Mitchell & Foster, for the defendant.

WALKER, *J.*:

One question presented by the case is whether the record evidence submitted to the governor, upon the proceeding before him for the extradition of the relator, shows, as a matter of law, that he exceeded his authority in issuing the warrant for her arrest and removal to Massachusetts. How far his duty was discretionary, and to what extent he was obliged to comply with the demand for the
21 surrender of the alleged fugitive from justice, are questions not necessarily material to the present inquiry. He has exercised whatever discretion he possesses, and has complied with the demand. He has issued his warrant for the arrest of the relator and for her return to Massachusetts. Has he thereby violated any of her rights of citizenship under the Constitution and laws of the United States or of this State?

The rendition of a fugitive from justice to the State from which he fled is authorized by the Constitution of the United States (art. IV, s. 2), which provides that "a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." To make this provision effectual, and to afford means for its practical operation, Congress has enacted that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the perso- charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear." R. S. U. S., s. 5278.

As supplementary to these provisions, the legislature of this State has enacted the following statute: "If the governor is satisfied that the demand is conformable to law and ought to be complied with he shall issue his warrant under the seal of the State, authorizing

the agent who shall make the demand, either forthwith or at such time as shall be designated in the warrant, to take and transport such person to the line of the State, at the expense of such agent, and shall also, by the warrant require the civil officers within this State to afford all needful assistance in the execution thereof." P. S., c. 263, s. 8. If the governor has not substantially complied with these constitutional and statutory provisions, the relator must
22 be discharged from arrest. She cannot be forcibly removed from this jurisdiction, except by virtue of legal process and procedure. Unless she is one of the class of persons which the Federal Constitution makes liable to rendition, and unless the legal requirements in such cases have been substantially observed, the governor's warrant is void, and the court must order her discharge. It is the duty of the court to protect the rights of citizenship.

The question of the validity of the governor's warrant must be considerd in connection with the demand, the copy of the indictment, and the affidavits submitted to him. It is not essential that the warrant should contain a formal statement of all the facts upon which it is issued. Kingsbury'- case, 106 Mass. 223; People *v.* Pinkerton, 17 Hun. 199; *In re* Romaine, 23 Cal. 585. If an examination of the record evidence presented to the governor legally authorizes the finding of the necessary facts, it will be presumed, in the absence of evidence to the contrary, that he made such findings. It is insisted that the warrant is fatally defective because it contains no statement of a finding by the governor that the relator is a fugitive from justice. In Roberts *v.* Reilly, 116 U. S. 80, in which the warrant was similar to the one in this case, the court say (p. 95): "It is conceded that the determination of the fact by the executive of the State in issuing his warrant of arrest, upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof." In State *v.* Justus 84 Minn. 237, 243, the court say upon this subject:—"This is a matter upon which the chief magistrate granting the warrant should have evidence, although the law does not describe its character, nor the precise rules by which such fact shall be established. It would seem to follow that the issuance of the warrant embraces the exercise of a prerogative of the governor of the State where the fugitive is, and that it must be presumed, in the absence of proof to the contrary, where the executive acts in such case, that he has performed his duty in that respect. Hence, when a proper warrant has been issued, the burden of showing that the prisoner has not fled or is not a fugitive from justice rests upon the prisoner in *habeas corpus* proceedings." In that case the warrant did not contain a finding that the prisoner
was a fugitive. It simply recited that "a demand has been
23 made, pursuant to the Constitution and laws of the United States, by H. A. Northcot, acting governor of the State of Illinois, upon the governor of the State of Minnesota for the delivery

of Eddie McNichols as a fugitive from justice of the State of Illinois." The court held this sufficient, on the ground that technical precision is not necessary in the warrant. See also, *Ex parte* Reggel, 114 U. S. 642; Commonwealth *v.* Hall, 9 Gray 262, 266: Kingsbury's case, *supra;* Davis' case, 122 Mass., 324; People *v.* Donohoe, 84 N. Y. 438; *Ex parte* Sheldon, 34 Ohio St. 319.

What the result might be upon *habeas corpus* proceedings, if none of the written evidence required by law for the issuance of the warrant were before the court, and the validity of the warrant was attacked (People *v.* Pinkerton, 17 Hun. 199), it is unnecessary to inquire. If the evidence is legally sufficient to support the necessary facts, it must be presumed, even from a warrant which does not contain a full recital of such facts, that it was based upon their existence. No particular form of a warrant is prescribed, and an examination of the case shows that the warrant in this case is not an exceptional one. The case of *In re* Jackson, 2 Flip. 183, holding that a warrant was invalid because it recited that the person charged had been "represented" to be a fugitive from justice, instead of stating an express conclusion on this point, is against the weight of authority, and was substantially overruled by Roberts *v.* Reilly *supra*, 2 Moore Ext., s. 640.

Whether the relator is charged with a crime in another State, and whether she is a fugitive from justice, are questions upon which it was the duty of the governor to pass before ordering her removal from the State. "Under the act of Congress, it became the duty of the governor of Utah to cause the arrest of Reggel, and his delivery to the agent appointed to receive him, when it appeared: (1) that the demand by the executive authority of Pennsylvania was accompanied by a copy of an indictment, or affidavit made before a magistrate, charging Reggel with having committed treason, felony, or other crime within that State, and certified as authentic by her governor: (2) that the person demanded was a fugitive from justice." *Ex parte* Reggel, 114 U. S., 642, 649. "To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun; but simply
24 that having, within a State, committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence he has left its jurisdiction, and is found within the territory of another." Roberts *v.* Reilly, 116 U. S. 80, 97.

In the matter of Voorhees, 32 N. J. Law, 141, 150, the court say: "A person who commits a crime within a State, and withdraws himself from such jurisdiction without waiting to abide the consequences of such act, must be regarded as a fugitive from the justice of the State whose laws he has infringed. Any other construction would not only be inconsistent with good sense, and with the obv-ous import

of the word to be interpreted in the context in which it stands, but would likewise destroy, for most practical purposes, the efficacy of the entire constitutional provision."

"The fact that a man is charged with crime in one State and is afterward found in another, has generally been regarded as *prima facie* evidence that he is a "fugitive." Drinkall *v.* Spiegel, 68 Conn. 441, 448: Kingsbury'- case *supra.*

The evidence that the relator departed from Massachusetts after the commission of the alleged crimes, and was found in this State, supports the necessary finding that she is a fugitive. The affidavit of Whitney tends to show that she fled "about the fourth day of November, A. D. 1901," after the dates of the crime alleged in the first two counts of the indictment, but before the date of the third crime. It may be true that she could not be a "fugitive" on account of a crime committed by her when not within the jurisdiction of Massachusetts, or that a person cannot be said to "flee" from a State unless he was personally there at the time of the alleged offence. Constructive presence may not be sufficient. 2 Moore Ext., ss. 581, 585, People *v.* Hyatt, 172 N. Y. 176.

But the fact, if it be one, that the relator departed from the demanding State before the commission of one crime alleged in the indictment, for which alone she could not be extradited, suggests no reason why she could not legally be returned for other crimes alleged to have been committed there before she left. The liability that she may be tried on the last count alone does not exclude her from the class of persons made liable to extradition by the Federal Constitution. She is still "a person * * * charged with * * * crime." The question is, not whether the governor might decline to extradite her, for that reason, or because he believed the demand was not made in good faith, but whether her rights of citizenship are infringed by her rendition to answer to such an indictment. Neither the constitution nor the statutes upon the subject make an exception of that character. Lascelles *v.* Georgia, 148 U. S. 537, 542, 547; Commonwealth *v.* Wright, 158 Mass. 149.

If the indictment upon which this proceeding is based had contained only the first count, but it appeared that another indictment containing the other counts was pending in the same court, that fact would not prevent the rendition of the prisoner, though the question in legal effect would be substantially the same as is presented here. The governor was justified in finding that she was a fugitive with reference to the first two counts in the indictment. But upon that question the relator is entitled to submit evidence and be heard; and the justice before whom the *habeas corpus* proceedings were returned may review the action of the governor in this respect. The governor's finding that the relator is a fugitive is not conclusive upon the court on *habeas corpus.* Church Hab. Corp., s. 474*a*; 2 Moore Ext., s. 640; Spear Ext. 391; Hartman *v.* Aveline 63 Ind. 344; Jones *v.* Leonard, 50 Ia. 106; *In re* Mohr, 73 Ala. 503. If his find-

ing of fact in this respect is erroneous, the prisoner is unlawfully restrained of her liberty and is entitled to a discharge. It is a principle of general application, that one cannot be finally deprived of his liberty except upon a judicial trial.

The fact that it appears from the indictment that the offences charged in the first two counts were committed more than six years before the finding of the indictment, does not preclude a finding that she was a fugitive from justice; and such finding by the governor was justified by the evidence before him. If Whitney's affidavit is ambiguous and may be open to more than one construction, so far as it relates to the length of time Mrs. Munsey resided in Massachusetts after the date of the offence alleged in the first count and before November 4, 1901, when he certifies she fled, it was not
26 incompetent as evidence, to be considered by the governor, upon the question whether she was a fugitive from justice as to the first two counts. It does not necessarily establish the proposition, as claimed by her, that during all that time she was "usually and publicly resident" (Mass. P. S., c. 213, s. 25) in that State. If it did, it would become necessary to consider the question whether under those circumstances she could be a fugitive from justice within the meaning of the law of extradition. The affidavit states unequivocally that she was "a fugitive from justice." This statement, though in some sense a conclusion of law, was held sufficient in *Ex parte* Reggel *supra*, where the court say (p. 653) that the accused should not be discharged "merely because, in the judgment of the court, the evidence as to his being a fugitive from justice was not as full as might properly have been required, or because it was so meagre as, perhaps, to admit of a conclusion different from that reached by" the governor. It was sufficient to make out a *prima facie* case. Whether, in this case, there was other evidence before the governor upon which his finding could be based, it is unnecessary to inquire.

The indictment upon which the requisition is founded consists of three counts, each charging the respondent with intentionally and fraudulently uttering and publishing as true "a certain forged instrument purporting to be a will." It is conceded that forging a will is a crime under the laws of Massachusetts. But it is claimed that the warrant is faulty, because it states that the relator is "charged with the crime of uttering forged wills." This is a sufficiently definite statement of the charges in the indictment for practical purposes, and affords no substantial or reasonable ground for holding the warrant to be void, especially when by a reference to the indictment its meaning is rendered sufficiently plain and definite.

The objection is made that the relator is charged in the indictment with three distinct and independent offences, and that for this reason the indictment is bad at common law and is repugnant to article XII of the bill of rights of Massachusetts, which provides that "no subject shall be * * * deprived of his * * * liberty, but by the judgment of his peers or the law of the land." It

is also claimed to be repugnant to the fourteenth amendment
27 of the Constitution of the United States for the same reason.

Whether this court has jurisdiction under the Federal Constitution and the law of Congress relating to extradition, to decide upon the validity of the formal allegations in the indictment, which substantially charges the fugitive with the commission of a crime, is a question which the weight of authority answers in the negative. Kentucky *v.* Dennison, 24 How. 66, 107; *Ex parte* Reggel, 114 U. S. 642, 651; *In re* Roberts, 24 Fed. Rep. 132; Roberts *v.* Reilly, *supra;* People *v.* Byrnes—33 Hun. 98, 101; Matter of Voorhees, 32 N. J. Law 141, 146; State *v.* O'Malley, 38 Minn. 243; Spear Ext. 498; 2 Moore Ext., ss. 550, 638; and cases cited *supra.* But without deciding whether the joinder of two or more counts in an indictment charging distinct offences is faulty as a matter of criminal pleading, it does not appear that in Massachusetts such joinder renders the indictment absolutely void. The indictment may still be sufficient to support a conviction under one of the counts. In Commonwealth *v.* Tuck, 20 Pick. 356, 361, it is said: "A defective indictment cannot be cured by verdict. If the crime be not correctly described, no judgment can be rendered either upon verdict or plea of guilty 2 Hale's P. C. 193; Commonwealth *v.* Morse, 2 Mass. (128) 130; Commonwealth *v.* Hearsey, 1 Mass. 137. But the objection now under consideration is totally different. It is not that the offence is defectively set forth, but that more than one offence is sufficiently set forth in the same indictment. The only argument which lies against the latter is, that it subjects the defendant to inconvenience and danger by requiring him to prepare himself to meet several charges at the same time. The appropriate remedy would be a motion to the court to quash the indictment, or to confine the prosecutor to some one of the charges'"

"The objection that the indictment is bad, because more than one offence is joined in it, cannot be sustained. It is settled in this Commonwealth that several offences may be charged in the same indictment when they are of the same general nature, and when the mode of trial and the nature of the punishment are the same." Commonwealth *v.* Brown, 121 Mass., 69, 82.

In Josslyn *v.* Commonwealth, 6 Met. 236, 239, Chief Justice Shaw remarks: "The next objection is, that there were two distinct offences charged in two distinct counts, which is irregular.
28 Without considering whether, if this is an irregularity, for which a court would, on motion, quash the indictment, or put the prosecutor to his election on which count to proceed (Commonwealth *v.* Tuck, 20 Pick. (356) 362), we think that, within certain limits, different offences of the same nature may be stated in different counts of an indictment, when the same mode of trial applies, and the same judgment is to be given."

"It is always open to the presiding judge to order a separate trial on each distinct charge, when there is any reason for supposing that the defendant will be perplexed in his defence, or unnecessarily

embarrassed by being put on trial for two distinct offences. We see no good reason for holding that it is illegal to present in the same indictment felonious offences of a similar character, and having a like punishment." Commonwealth *v.* Hills, 10 Cush. 530, 534. See, also, Commonwealth *v.* Carey 103 Mass. 214; Commonwealth *v.* Costello, 120 Mass. 358.

Even if it were conceded that this indictment is faulty for the reason assigned by the relator, and that a trial and conviction on all the counts would not be in accordance with "the law of the land," it would not follow that the indictment was a nullity and that her arrest thereon was illegal. The fact that it contains three counts does not make it necessary that she should be tried upon each, or prevent the entry of a *nolle prosequi* as to two of them and a trial as to the other; and a verdict of guilty under one count alone would not be erroneous because the indictment contained other counts for which she was not tried. Commonwealth *v.* Holmes, 103 Mass. 440. If she cannot under the Constitution of the United States or under that of Massachusetts be tried for three distinct offences set out in one indictment, it is not to be presumed that the courts of that State would sanction such procedure, but that they would protect her in the enjoyment of all of her constitutional rights. Her constitutional right to be tried according to the "law of the land" does not necessarily include a right to escape a trial upon one good count in a regularly returned indictment containing other counts. Commonwealth *v.* Cain, 102 Mass. 487, 489.

But it is not necessary to determine what the effect of the alleged misjoinder may be upon the validity of the indictment at
29 common law, or to discuss the question whether the decisions of the Massachusetts court above referred to, and many other similar cases in that jurisdiction, are repugnant to constitutional provisions.

If they are open to that objection, as the relator claims, the courts of that State, where her alleged crime was committed and where she must be tried, if tried at all, will afford her ample protection in all her constitutional rights. The contrary presumption cannot be entertained, if the Federal law providing for the extradition of alleged criminals is recognized as an effectual means of aiding in the enforcement of the criminal laws of the various States.

An authoritative determination of this question has been made by the Supreme Court of the United States, as far at least as the Federal Constitution is concerned. One Pearce was arrested in Texas, on a requisition from the governor of Alabama for his extradition for trial in the latter State on two indictments for embezzlement and larceny. He sought his discharge upon *habeas corpus*, on the ground that the indictments were insufficient to authorize his extradition, because it was not alleged therein that the offences were committed in Alabama, that no time or place were laid therein, and that it did not appear where the offences were committed. He relied entirely for his discharge upon the invalidity of the indict-

ments. The trial court in which the *habeas corpus* proceedings were instituted refused to discharge him. He thereupon took an appeal to the court of criminal appeals of Texas, where it was held that "if it reasonably appears upon the trial of the *habeas corpus* that the relator is charged by indictment, in the demanding State, whether the indictment be sufficient or not under the law of that State, the court trying the *habeas corpus* case will not discharge the relator, because of substantial defects in the indictment under the laws of the demanding State. To require this would entail upon the court an investigation of the sufficiency of the indictment in the demanding State, when the true rule is, that if it appears to the court that he is charged by indictment with an offence, all other prerequisites being complied with, the applicant should be extradited." *Ex parte* Pearce, 32 Texas, Cr. Rep. 301, 307.

30 The case was then brought before the Supreme Court of the United States, and the decision of the State court was affirmed in an opinion delivered by Chief Justice Fuller, in which he says:

"It was not disputed that the indictments were in substantial conformity with the statute of Alabama in that behalf, and their sufficiency as a matter of technical pleading would not be inquired into on *habeas corpus*. *Ex parte* Reggel, 114 U. S. 642. Nor was there any contention as to the proper demand having been made by the executive authority of the State from whence the petitioner had departed, or in respect of the discharge of the duty imposed by the Constitution and laws of the United States on the executive authority of the asylum State to cause the surrender. The question resolved itself, therefore, into one of the validity of the statute on the ground of its repugnancy to the Constitution, and the court of appeals declined to decide in favor of its validity. And if it could be said upon the record that any right under the Constitution had been specially set up and claimed by plaintiff in error at the proper time and in the proper way, the State court did not decide against such right, for the denial of the right depended upon a decision in favor of the validity of the statute.

What the State court did was to leave the question as to whether the statute was in violation of the Constitution of the United States, and the indictments insufficient accordingly, to the demanding State. Its action in that regard simply remitted to the courts of Alabama the duty of protecting the accused in the enjoyment of his constitutional rights, and if any of those rights should be denied him, which is not to be presumed, he could seek his remedy in this court. We cannot discover that the court of appeals, in declining to pass upon the question raised in advance of the courts of Alabama, denied to plaintiff in error any right secured to him by the Constitution and laws of the United States, or that the court in announcing that conclusion erroneously disposed of a Federal question." Pearce *v.* Texas, 155 U. S. 311, 313, 314; *Ex parte* Hart, 59 Fed. Rep. 894.

As the relator is substantially charged with the commission of one crime at least in Massachusetts, upon an indictment properly authenticated, and as it appears that the form of the indict-
31 ment, if peculiar, is in accordance with the uniform practice in that State, this court will neither affirm nor deny the constitutionality of that method of procedure in the courts of the demanding State. To do so would be based upon the assumption of a right to impugn the validity of the decisions of a sister State, and to hold that the relator could not be extradited unless it appeared that her trial in that State would be in accordance with the ideas of this court upon the question of its constitutionality. Such a holding, while opposed to the ordinary principles of comity existing between the States, would go far towards abrogating the salutary provisions of the Federal law upon the subject of extradition. People *v.* Byrnes, 33 Hun. 98, 101, 104. So far as the trial of the question of her rendition is concerned, the joinder of counts in the indictment presents no serious difficulty.

The evidently clerical error in the affidavit of the clerk of the court, that the indictment was returned "on the second Monday of February, A. D. 1892" did not preclude a finding by the governor that the true date was the second Monday of February 1902. The caption of the indictment, as well as the affidavit of the district attorney, fully authorized that conclusion, which is placed beyond peradventure by an amendment of the clerk's affidavit in this court. The objection urged on this ground is a refinement of technical reasoning which has nothing to commend it in the modern administration of justice in criminal cases.

Nor does the fact that the warrant was addressed to the sheriff of Merrimack county, and not to the agent appointed by the demanding State, afford any reason for the relator's discharge. The statute (P. S., c. 263, s. 8) does not require that the warrant should be directed to the agent, but that it should authorize him "to take and transport" the fugitive out of the State, and should require the civil officers of the State to render necessary assistance for that purpose. The warrant was issued in compliance with these requirements.

As the relator has not succeeded in showing that any of her rights of citizenship are jeopardized by the action of the governor, the denial of her motion for a discharge, upon the reserved case, presents no error.

Exception overruled.

All concurred.

32 On the 28th day of January 1903 the following order was received from the said supreme court:

THE STATE OF NEW HAMPSHIRE:

Supreme Court.

STATE
v.
M. SWAIN CLOUGH. } No. 170.

To the clerk of the superior court for the county of Merrimack:

I hereby certify that in the above entitled action, on the twenty-seventh day of December A. D. 1902, it was ordered by the supreme court that the exception be overruled.

Attest: A. J. SHURTLEFF, *Clerk.*

January 28 1903.

33 The said superior court made further findings of fact and orders in the case as follows:

34 MERRIMACK, *ss:*

Superior Court.

STATE *ex Relatione* MARTHA S. MUNSEY }
vs.
M. SWAIN CLOUGH. }

Habeas corpus against the sheriff of Merrimack county, dated March 8, 1902.

Adjourned hearing before Stone, justice, March 28, 1903.

The case is the same as that reported in 71 N. H. 594.

The petition for the writ of *habeas corpus* is in part as follows:

"Your petitioner avers that she is illegally restrained of her liberty, because the proceedings and process upon which the executive warrant was issued by the governor of the State of New Hampshire are irregular and defective, and the evidence filed in support thereof is insufficient, the documentary evidence contradictory, and, assuming all the evidence to be true, is not sufficient to warrant the extradition of your petitioner.

"Third. That your petitioner is not a 'fugitive from justice.'

"Fourth. Because the governor of the State of New Hampshire, upon the hearing on the application for the issue of said executive warrant, declined and refused to hear or consider any evidence from your petitioner, or in behalf of your petitioner, upon the question of whether she was a 'fugitive from justice,' or upon any other question, and ruled that the only evidence which he would consider, and upon which he based the issuance of said warrant, was the docu-

mentary evidence offered and filed in support of the requisition made by the governor of Massachusetts.

"Fifth. Because the only evidence considered by the governor of the State of New Hampshire, upon which he issued the warrant on the aforesaid requisition, was documentary evidence filed in support of the requisition of the governor of the Commonwealth of Massachusetts, and because he refused and declined to hear any evidence, either documentary or oral, offered in behalf of your petitioner."

35 At the adjourned hearing the relator, subject to the defendant's exception, introduced evidence from which it appeared that the relator was arrested March 3, 1902, by the sheriff for Merrimack county, upon a complaint and warrant, under sections 1 and 2, chapter 263, of the Public Statutes, charging her with uttering forged wills and being a fugitive from justice.

The requisition papers were filed with the secretary of state March 3, and on March 4 were laid before the governor, when counsel for the relator appeared before the governor and stated that they desired a hearing before him before a warrant should be granted on the requisition papers.

Counsel for the State of Massachusetts opposed this application, taking the ground that questions of fact should not be determined by the governor.

The relator's counsel renewed their claim that she was entitled to a hearing upon questions of fact, and in particular upon her claim that she was not a fugitive from justice.

It was pointed out to the governor, by the relator's counsel, that she was already in custody, for the purpose of securing her person with a view to extradition.

The governor refused to hear any testimony upon any question of fact, and upon the advice of the attorney-general issued his warrant upon the requisition papers without other testimony than that contained in those papers.

The relator then introduced the requisition papers upon which the warrant was issued, subject to the defendant's exception.

The preamble to the requisition, signed by the acting governor of Massachusetts, is as follows:

"Whereas, it appears by certain documents which are hereunto annexed, and which I certify to be authentic and duly authenticated, in accordance with the laws of this Commonwealth, that Martha S. Munsey stands charged with the crime of uttering forged wills, which I certify to be a crime under the laws of this Commonwealth, committed in the county of Middlesex, in this Commonwealth; and, it having been represented to me that she has fled from the justice of this Commonwealth and may have taken refuge in the State of New Hampshire." The demand of the governor was as follows: "Now, therefore, pursuant to the provisions of the Constitution and the laws of the United States in such case made and provided, I do hereby require that the said Martha S. Munsey be apprehended

and delivered to Jophanus H. Whitney, who is hereby authorized to receive and convey her to the Commonwealth of Massachusetts, there to be dealt with according to law.

36 "In witness whereof I have hereunto signed my name and caused the seal of the Commonwealth to be affixed at the capitol in Boston, this twenty-eighth day of February, in the year of our Lord one thousand nine hundred and two.

"By his honor, the lieutenant-governor, acting governor,

"WM. M. OLIN,
"*Secretary of the Commonwealth.*

The governor's requisition contains no other authentication of any of the accompanying papers.

Following the requisition is a certificate of the district-attorney, which is as follows:

"COMMONWEALTH OF MASSACHUSETTS, }
"*Middlesex,* } *ss:*

FEBRUARY 26, A. D. 1902.

"To His Excellency the Governor.

"SIR: I have the honor to request that you issue a requisition upon the governor of the State of New Hampshire for the extradition of Martha S. Munsey, who stands charged by indictment with the crime of uttering forged wills, committed in the county of Middlesex, on the twenty-eighth day of February, A. D. 1895, on the seventeenth day of May, A. D. 1895, and on the twentieth day of November, A. D. 1901, and who, to avoid prosecution, fled from the jurisdiction of this Commonwealth and is now a fugitive from justice, and, as I am informed, is within the jurisdiction of said State of New Hampshire.

"I hereby certify that, in my opinion, the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense, and that I am willing such expense shall be a charge on the county in which the crime was committed, to wit, the county of Middlesex.

"I also certify that I have carefully examined into the facts and verily believe that there is sufficient evidence to secure a conviction of the said fugitive.

"I designate and recommend Jophanus H. Whitney, a public officer, viz., a district police officer, as a proper person to be appointed agent of the Commonwealth, and certify that he has no personal interest in the arrest and return of the fugitive other than that of a proper performance of official duty.

"I am not aware of, and verily believe there never has been, any former application for a requisition for the same person, for the same offense, which is the basis of this application.

37 "I am not aware and verily believe the said fugitive is not now under either civil or criminal arrest.

"I further certify that the requisition for her extradition is made in good faith, with the sole intent to prosecute her for said crime, and not secure *his* return to this Commonwealth to afford opportunity to serve *him* with civil process, nor for any other purpose.

"And I further certify that all papers in duplicate have been compared with each other, and are in all respects exact counterparts.

"And I further certify that the offence charged against the said fugitive is a felony, and that said offence and punishment therefor is defined in section one of chapter two hundred and four of the Public Statutes.

"Application for the arrest and return of the said fugitive has not been sooner made because the indictment was not found by the grand jury until the February sitting of the superior court in the year 1902.

"Very respectfully,

"GEORGE A. SANDERSON,
"*District Attorney for the Northern District.*"

Then follows the certificate of the secretary of state of Massachusetts, to the effect that Albert Mason is chief justice of the superior court, and Theodore C. Hurd, clerk of said court for Middlesex county, and that their signatures to the annexed papers are genuine.

Then follows a certificate of Chief Justice Mason to the official character of the clerk, Hurd, his custody of the files and records of the court, his right to certify copies of such files and records, and that his attestation to the annexed papers is in due form.

Then follows a copy of the indictment and of the record of its filing in court, verified by the clerk.

The next paper is a copy of the capias writ for the arrest of the relator, with the return of Walter C. Wardwell, deputy sheriff, endorsed thereon, to the effect that he has been unable to find her in his precinct.

The next paper is a copy of an affidavit of Jophanus H. Whitney, purporting to have been sworn to before Walter C. Wardwell, justice of the peace, being the copy printed on pages 5 and 6 of the case heretofore transferred (No. 170 Merrimack), there described as an "affidavit."

38 The following and last paper accompanying the requisition is the certificate of the clerk, which is as follows:

'COMMONWEALTH OF MASSACHUSETTS, } ss:
Middlesex, }

"I, Theodore C. Hurd, clerk of the superior court within and for the county of Middlesex, do certify that the foregoing papers, numbered one, two and three, are true copies of the indictment pending

in said superior court, of the capias issued thereon, with the return of the officer thereon, and also the affidavit of said officer filed in said case.

"In testimony whereof I hereunto set my hand and affix the seal of said superior court, this twenty-fourth day of February, A. D. 1902.

"THEO. C. HURD,
"*Clerk of Superior Court.*"

None of the foregoing requisition papers were numbered.

The only copy of an affidavit contained in the papers is that of Jophanus H. Whitney, above referred to.

There is no authentication, or certification, of the official character of Walter C. Wardwell, as a justice of the peace.

The certificate of the district attorney is not under oath, nor is there any authentication, or certification, among the papers, of his official character or authority.

It appeared that the relator was taken into custody on the governor's warrant on the fourth day of March, 1902, and petitioned for the writ of *habeas corpus* on the fifth day of March, and that the same was granted on the eighth day of March, 1902; and that the hearing thereon was the fifteenth of the same month.

At the close of this evidence the relator's counsel rested and moved that she be discharged, which motion was denied, subject to the relator's exception.

The court thereupon ordered that the relator proceed to introduce evidence upon the question whether she was in fact a fugitive from justice. This the relator's counsel declined to do, upon the ground that such action, on their part, would constitute a waiver of their right to object to the refusal of the governor to grant a hearing upon this question of fact.

39 The court then directed that counsel for the relator state whether the relator waived the right to then, or at any future time, introduce further evidence upon this, or any question of fact, and counsel for relator declared that she did waive that right.

No evidence was offered by the relator either upon the question whether the relator was a fugitive from justice, or upon any other question of fact, other than as above stated.

The questions arising upon the relator's motion, and the exceptions above stated are reserved.

CHARLES F. STONE,
Presiding Justice.

40 [Endorsed:] 264 Merrimack. Case. State *v.* Clough. Edward A. Lane. Mitchell & Foster. Sargent, Niles & Morrill. Entered Apr. 8 1903 Pl'f's brief by May 8 1903 D'f't's brief by May 23 1903 Hearing Jun- session 1903.

41 Said case was transferred to the 1903 term of said supreme court and the action was continued to the present term of the superior court; and now the parties appear. On the second day of June 1903 the supreme court files the following opinion in said case:—

42 MERRIMACK:

STATE
v.
CLOUGH. } 264.

Habeas corpus. Trial in the superior court before Stone, J., at an adjourned hearing March 28, 1903.

The relator after submitting the record evidence presented before the governor and causing it to appear that she was denied a hearing before him, moved to be discharged, which motion was denied, subject to exception. The other facts sufficiently appear in the opinion.

Edwin A. Lane, Sargent, Niles & Morrill for the relator.

Mitchell & Foster for the defendant.

BINGHAM, *J.*:

The relator contends that the warrant upon which she was arrested was illegally issued, because she was not permitted to be heard before the governor upon the question whether she was a fugitive from justice, and assigns this as a reason why she should be discharged from arrest.

It was a question of fact to be determined in the first instance by the governor, whether the relator was a fugitive from justice (*In re* Cook, 49 Fed. R. 833, 838); but she was then not entitled as of right to be heard. It was discretionary with the governor to grant or deny her request. It is not the practice in such proceedings to give the accused notice before the rendition warrant is issued, and the act of Congress and the statutes of this State do not contain a provision requiring that she should be notified. The reason for the omission of such a provision is apparent,—if notice were required, the practical operation of the law would be rendered nugatory and its purpose defeated. It is an *ex parte* proceeding and necessarily so. *In re* Cook, *supra*, 838.

While the presence of the relator at the hearing obviated the usual objection to giving the accused notice, yet her presence did not create a legal right to be heard, and no such right previously existed.

43 If the relator had the right not to be removed from the State without a judicial trial, the issuing of the warrant for her arrest did not conclude her right in this respect. Under the law of this State she could sue out a writ of *habeas corpus* and test the question, whether she was a fugitive from justice; and if it were made to appear to the court that the finding of the governor

on this question was erroneous, she would be entitled to her discharge. State *v.* Clough, 71 N. H. 594, 600, 601. It was also expressly provided in the rendition warrant that she should be afforded an opportunity to sue out a writ of *habeas corpus* before being delivered over to the Massachusetts authorities. She has availed herself of that privilege; but in the trial before the superior court she declined and expressly waived the right to then, or at any future time, offer evidence showing that she was not a fugitive from justice, and contented herself with submitting the record evidence presented to the governor and causing it to appear that she had been denied a hearing before him.

As the relator was entitled, in the trial before the superior court, to review the action of the governor and be discharged, if his finding upon this question of fact was erroneous, or if there was no evidence from which he was warranted in making the finding, we are unable to see wherein she has been deprived of any right to be heard to which she was legally entitled.

As the governor should not have issued his warrant without proof that the accused was a fugitive from justice (State *v.* Clough, *supra*, 598,599, *Ex parte* Reggel, 114 U. S. 642), it is argued that the record evidence was incompetent and insufficient to warrant such a finding. But the character of proof essential to establish the fact is not prescribed by the act of Congress (R. S. s. 5278), or the statutes of this State. P. S. c. 263, ss. 7, 8. And while it has been said that "the executive of the State in which the accused is found does not fail in duty if he makes it a condition precedent that it be shown to him by competent proof that the accused is, in fact, a fugitive from justice" (*Ex parte* Reggel, *supra*), this does not mean that he shall not receive evidence that fails to meet the requirements of legal proof, if he deems it advisable. It appears to have been the policy of Congress, and of the legislature, to permit the chief executive to determine the question upon such proof as seems to him worthy of credit. And in Roberts *v.* Reilly, 116 U. S. 80, 95; and *In re* Cook, *supra* 838, it was held that the executive of the State upon whom the demand is made is to decide the question, "upon such evidence as he may deem satisfactory."

44

Among the documents accompanying the requisition of the governor of Massachusetts, and which he certified to be authentic and duly authenticated, was a copy of an affidavit made by Jophanus H. Whitney, purporting to have been sworn to before a justice of the peace, and in which it was stated that the relator had fled from the limits of said Commonwealth and was a fugitive from justice; also that at the time of the commission of said crime she was in the State of Massachusetts.

This copy of an affidavit would not answer the requirements of legal proof in a court of justice; and the same is true of the original affidavit. But legal rules prescribing the competency of proof do not, in the absence of statutes, govern the admission of evidence in

extradition proceedings, except so far as the executive may see fit to adopt them.

A statute of Massachusetts provides that sworn proof, that the accused is a fugitive from justice, shall accompany an ap-
45 plication for a requisition to the governor of that State. Mass. R. L. c. 217, s. 11. The original affidavit of Whitney, from which the copy here under consideration was made, is without doubt the sworn proof required by the statute of that State to be there filed with the governor; and we cannot say that the governor of this State was not justified in receiving a copy of that sworn proof in evidence and treating it as worthy of credit.

That the Whitney affidavit contained evidence warranting a finding that the accused was a fugitive from the justice of Massachusetts, and was actually present in that State at the time of the commission of the crime charged, has already been decided. State *v.* Clough, *supra*.

The relator's motion to be discharged was properly denied. Exception overruled.

46 On the third day of July 1903 the following order is received from said supreme court:

THE STATE OF NEW HAMPSHIRE:

Supreme Court.

STATE *v.* CLOUGH. } No. 264.

To the clerk of the superior court for the county of Merrimack:

I hereby certify that in the above entitled action, on the 2d day of June A. D. 1903, it was ordered by the supreme court that the exception be overruled.

Attest: A. J. SHURTLEFF, *Clerk.*

July 3, 1903.

47 On the same third day of July 1903 the plaintiff, Martha S. Munsey, files the following objections to judgment:—

48 MERRIMACK, ss:

Superior Court, April Term, 1903.

STATE (*ex Relatione*) MARTHA S. MUNSEY
v.
M. SWAIN CLOUGH.

This relator objects to rendition of judgment against her in this case by the superior court for the following reasons:

First. Because under the fifth amendment of the Constitution of the United States and under section 1 of the fourteenth amendment to said Constitution, as well as under section 2 of article 4 of said Constitution and section 5278 of the Revised Statutes of the United States, the governor exceeded his authority in issuing his warrant for her arrest and removal to Massachusetts, because the record evidence before him did not show her to be a fugitive from justice as to all the crimes with which she was charged and for which she was demanded in this extradition proceeding, but on the contrary showed her to have left the State prior to the alleged commission of the third crime for which she was so demanded, hence under said organic and statutory provisions of law she is entitled to be discharged.

Second. Because under said statutory and constitutional provision the evidence contained in the requisition papers was legally insufficient to justify the governor in finding your relator to be a fugitive from justice as to any one of the crimes for which she was demanded, in said extradition proceeding, hence, under said organic and statutory provisions of law she is entitled to be discharged.

Third. Because under said statutory and constitutional provision of law the documentary evidence submitted to the governor was not competent to be considered by him on the question whether your relator was a fugitive from justice and could not authorize a finding to that effect, and a rendition warrant based on such finding, hence, under said provisions of law, she is entitled to be discharged.

Fourth. Because under said statutory provision and under said constitutional provisions she was entitled, as a matter of right to be heard when she appeared before the governor at the time the requisition papers were submitted to him, and asked to be
49 heard on her claim that she was not a fugitive from justice, and that his refusal to hear her and to admit any testimony other than that contained in the requisition papers was not "due process of law" within the meaning of that term as used in the fifth amendment to the Constitution of the United States, and was not "due process of law" within the meaning of that term as used in section 1 of the fourteenth amendment to said Constitution, and hence the issue of the rendition warrant by him and your relator's arrest thereon was illegal and she is entitled to her discharge under

the provision of said fifth amendment to the Constitution of the United States, and also under the provision of section 1 of the fourteenth amendment to said Constitution.

All of the foregoing reasons for the discharge of your relator were urged upon the supreme court in the briefs of your relator's counsel and these reasons are herewith urged and filed in this superior court as objections to a final judgment by it against her.

MARTHA S. MUNSEY,
By her att'y, EDWARD A. LANE.

Filed July 3, 1903.
A. J. SHURTLEFF, *Clerk.*

50 MERRIMACK, *ss:*

Superior Court, April Term, 1903.

STATE
v.
M. SWAIN CLOUGH.

In the above entitled action it is ordered that there be judgment for the defendant July 3, 1903.

It is therefore considered by the court that said defendant recover of said plaintiff costs of suit taxed at seventy-one dollars.

On the same 3d day of July 1903 the plaintiff, Martha S. Munsey, files the following motion :—

51 MERRIMACK, *ss:*

Superior Court, April Term, 1903.

STATE (*ex Rel.*) MARTHA S. MUNSEY
v.
M. SWAIN CLOUGH.

Your relator in above named *habeas* proceeding moves for a stay of proceedings on the judgment in this case pending application for writ of error from the Supreme Court of the United States to this court and the proceedings thereunder.

MARTHA S. MUNSEY,
By her att'y, EDWARD A. LANE.

Filed July 3, 1903.

Motion granted.

52 On the 23d day of July 1903 the plaintiff files the following petition :—

53 UNITED STATES OF AMERICA, }
State of New Hampshire. }

To the Honorable Robert M. Wallace, chief justice of the superior court of the State of New Hampshire:

Petition of Martha S. Munsey of Pittsfield, in the county of Merrimack, State of New Hampshire, respectfully shows that she was arrested on the rendition warrant of the governor of said State on the fourth day of March, A. D. 1902, and on the following day petitioned Justice Stone of your superior court for a writ of *habeas corpus* as by the record now remaining in said court appears.

Said writ of *habeas corpus* was granted by said Justice Stone on the eighth day of March, A. D. 1902, and the hearing thereon was held before him on the fifteenth day of said month, when the sheriff of the county of Merrimack, M. Swain Clough, to whom said rendition warrant was addressed, made the following return on said writ:

STATE OF NEW HAMPSHIRE, }
Merrimack, } *ss:*

MARCH 15, 1902.

To Mr. Justice Stone:

I have here in court the within named Martha S. Munsey, who is now in my custody under a warrant from the governor of New Hampshire, on the requisition of the governor of Massachusetts to arrest said Martha S. Munsey and deliver her to Jophanus H. Whitney as the duly authorized agent of the Commonwealth of Massachusetts: and she has so been in my custody since March 4, 1902, when I received said warrant, a copy of which is hereto annexed.

M. SWAIN CLOUGH, *Sheriff.*

Your petitioner then introduced in evidence the governor's warrant and the record on which he based his action in issuing it, all of which appears in the record of the case, and moved that she be discharged.

Upon this motion the court made the following ruling: "Motion denied, that the case may be transferred to the supreme court
54 for their decision."

To this ruling your petitioner duly excepted.

The legal questions thus arising were reserved for the decision of said supreme court, and an adjournment was taken to await the result.

On December twenty-seventh, A. D. 1902, said supreme court rendered a decision overruling the exception taken as above.

Whereupon an adjourned hearing was held in your superior court before Justice Stone at the court house in Concord in said county of Merrimack on the twenty-eighth day of March, A. D. 1903.

At said adjourned hearing it appeared that the governor of the State of New Hampshire denied your petitioner a hearing prior to issuing his rendition warrant and certain other additional facts also appeared as shown by the record in the case.

After your petitioner, subject to exception, had introduced the record on which the governor acted, and had also shown his refusal to hear her, she rested and moved that she be discharged, which motion was denied subject to her exception.

The court thereupon ordered that your petitioner proceed to introduce evidence upon the question whether she was in fact a fugitive from justice.

This your petitioner's counsel declined to do upon the ground that such action, on their part, would constitute a waiver of their right to object to the refusal of the governor to grant a hearing upon this question of fact.

The court then directed that counsel for your petitioner state whether she waived the right to then, or at any future time, introduce further evidence upon this, or any question of fact, and counsel for your petitioner declared that your petitioner did waive that right.

The questions arising upon your petitioner's motion for her discharge and the exception taken by her as above were reserved for the decision of the supreme court.

On June second, A. D. 1903, said supreme court rendered a decision overruling the exception taken by your petitioner, and
55 on the third day of July, A. D. 1903, a certificate was filed by the clerk of the supreme court in the superior court of which the following is a copy:

THE STATE OF NEW HAMPSHIRE:

Supreme Court.

STATE
v. } No. 264.
CLOUGH.

To the clerk of the superior court for the county of Merrimack:

I hereby certify that in the above entitled action on the 2nd day of June, A. D. 1903, it was ordered by the supreme court that the exception be overruled.

Attest: A. J. SHURTLEFF, *Clerk.*

July 3, 1903."

Whereupon on said 3rd day of July A. D. 1903, your petitioner filed in said superior court the following objections;—

"MERRIMACK, ss:

Superior Court, April Term, 1903.

STATE (*ex Relatione*) MARTHA S. MUNSEY
v.
M. SWAIN CLOUGH.

This relator objects to rendition of judgment against her in this case by the superior court for the following reasons:

First. Because under the fifth amendment to the Constitution of the United States, and under section 1 of the fourteenth amendment to said Constitution, as well as under section two of article four of said Constitution and section 5267 of the Revised Statutes of the United States, the governor exceeded his authority in issuing his warrant for her arrest and removal to Massachusetts, because the record evidence before him did not show her to be a fugitive from justice as to all the crimes with which she was charged and for which she was demanded in this extradition proceeding, but on the contrary showed her to have left the State prior to the alleged commission of the third crime for which she was so demanded, hence under said organic and statutory provisions of law she is entitled to be discharged.

Second. Because under said statutory and constitutional provisions the evidence contained in the requisition papers was legally
56 insufficient to justify the governor in finding your relator to be a fugitive from justice as to any one of the crimes for which she was demanded in said extradition proceeding, hence under said organic and statutory provisions of law she is entitled to be discharged.

Third. Because under said statutory and constitutional provisions of law the documentary evidence submitted to the governor was not competent to be considered by him on the question whether your relator was a fugitive from justice and could not authorize a finding to that effect, and a rendition warrant based on such finding, hence, under said provisions of law, she is entitled to be discharged.

Fourth. Because under said statutory provision and under said constitutional provisions she was entitled, as a matter of right, to be heard when she appeared before the governor at the time the requisition papers were submitted to him, and asked to be heard on her claim that she was not a fugitive from justice, and that his refusal to hear her and to admit any testimony other than that contained in the requisition papers was not "due process of law" within the meaning of that term as used in the fifth amendment to the Constitution of the United States, and was not "due process of law" within the meaning of that term as used in section one of the fourteenth amendment to said Constitution, and hence the issue of the

rendition warrant by him and your relator's arrest thereon was illegal and she is entitled to her discharge under the provision of said fifth amendment to the Constitution of the United States, and also under the provision of said section one of the fourteenth amendment to said Constitution.

All of the foregoing reasons for the discharge of your relator were urged upon the supreme court in the briefs of your relator's counsel and these reasons are herewith urged and filed in this superior court as objections to a final judgment by it against her.

MARTHA S. MUNSEY,
By her att'y, EDWARD A. LANE."

57 And thereafterward on the same day, notwithstanding said objections, the following judgment was rendered:

MERRIMACK, ss:

Superior Court, April Term, 1903.

STATE
v.
M. SWAIN CLOUGH.

In the above entitled action it is ordered that there be judgment for the defendant.

July 3, 1903.

Whereupon, thereafterward, on the same day the following motion was filed in said superior court:

MERRIMACK, ss:

Superior Court, April Term, 1903.

STATE (*ex Rel.*) MARTHA S. MUNSEY
v.
M. SWAIN CLOUGH.

Your relator in above named *habeas corpus* proceedings moves for a stay of proceedings on the judgment in this case pending application for writ of error from the Supreme Court of the United States to this court, and the proceedings thereunder.

MARTHA S. MUNSEY,
By her att'y, EDWARD A. LANE.

Whereupon the above motion was granted.

MARTHA S. MUNSEY,
By her att'y, EDWARD A. LANE.

STATE *ex-Relatione* MARTHA S. MUNSEY
v.
M. SWAIN CLOUGH.

Inasmuch as your relator moved for her discharge in the superior court, which motion was denied subject to her exception, which exception was finally overruled and judgment entered against her notwithstanding the objections filed by her in said superior court, she claims there is error in the record and proceeding and in said judgment and makes the following

58 *Assignment of Errors.*

First. Because under the provision of the fifth amendment to the Constitution of the United States that no person shall be "deprived of life, liberty or property without due process of law," also of the provision in section one of the fourteenth amendment to said Constitution "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the law;" also under the provision in section two, article four of said Constitution "a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on the demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime;" also under the provision of section 5278 of the Revised Statutes of the United States there was error in law in holding that the record evidence submitted to the governor justified the issue of his rendition warrant against your relator when such evidence failed to show her a fugitive from justice as to all the crimes with which she was charged and for which she was demanded in this extradition proceeding; but showed that she left the State prior to the date of the alleged commission of one of said crimes for which she was demanded for trial, and that said holding of the law and said judgment rendered in pursuance of such holding violated the statutory and constitutional rights of your relator under said organic and statutory provisions of law.

Second. Because in view of all of said provisions of the organic and statutory law of the United States it was error in law to hold that the evidence contained in the requisition papers submitted to the governor legally authorized a finding by him that your relator was a fugitive from justice as to any one of the crimes for which she was demanded in said extradition proceeding, and that such holding of the law and said judgment rendered in pursuance of such holding violated the statutory and constitutional rights of your relator under said organic and statutory provisions of law.

59 Third. Because in view of all of said provisions of the organic and statutory law of the United States it was error

in law to hold that the documentary evidence submitted to the governor was competent to be considered by hin on the question of fact whether your relator was a fugitive from justice and that there was especial error in law in holding that a copy of the Whitney affidavit was competent to be considered by the governor on said question of fact, and that such holding of the law and said judgment rendered in pursuance of such holding violated the statutory and constitutional rights of your relator under said organic and statutory provisions of law.

Fourth. Because under said provisions of the organic and statutory law of the United States and especially under said provision in the fifth and in the fourteenth amendments to the Constitution of the United States it was error in law to hold that your relator could not be heard, as a matter of right, before the governor at the time and under the circumstances in which she appeared before him, and that his refusal to hear her was "due process of law" and deprived her of no legal right which she possessed and that such holding of the law and said judgment rendered in pursuance of such holding violated the statutory and constitutional rights of your relator under said organic and statutory provisions of law.

Fifth. Because under said provisions of the organic and statutory law of the United States it was error in law to hold that your relator was shown to be substantially charged with crime when the record duly authenticated by the governor of Massachusetts and submitted to the governor of New Hampshire showed that the indictment obtained against her was filed in the superior court in and for the county of Middlesex, State of Massachusetts in the month of February, A. D. 1892, and the crimes alleged therein were charged to have been committed by her on the twenty-eighth day of February, A. D. 1895, on the seventeenth day of May A. D. 1895 and on the twentieth day of November, A. D. 1901, and that such holding of the law and said judgment rendered in pursuance of said holding violated the statutory and constitutional rights of your relator
60 under said organic and statutory provisions of law.

Sixth. Because under all of said provisions of the organic and statutory law of the United States your relator was illegally restrained of her liberty and was entitled to be discharged, hence, there was error in law in rendering said judgment against her, and the rendering of it violated the statutory and constitutional rights of your relator as herein set forth.

As all of the foregoing holdings of the court were made contrary to the contention of your relator and despite her claim that she was entitled to be discharged under said organic and statutory provisions of law, and as said judgment has been rendered against her in said superior court held in and for the county of Merrimack in the State of New Hampshire notwithstanding all of her objections thereto she craves a reversal thereof by reason of said errors in law.

MARTHA S. MUNSEY,
By her att'y, EDWARD A. LANE.

61 And on the same 23d day of July 1903 the court makes thereon the following order:

STATE OF NEW HAMPSHIRE:

Superior Court.

JULY 21, A. D. 1903.

Ordered that a writ of error issue according to foregoing petition and assignment of errors, upon the execution of a bond, with sufficient sureties in the sum of ($1500.) fifteen hundred dollars.

ROBERT M. WALLACE,
Chief Justice of the Superior Court of New Hampshire.

Filed July 23, 1903.

62 On the 8th day of September 1903 the plaintiff files in said superior court a bond of which the following is a true copy:

63 Know all men by these presents, that we, Martha S. Munsey of Pittsfield in the county of Merrimack and State of New Hampshire, as principal, and George W. Munsey, Frank D. Hutchins, William J. Brooks and Everett Jenkins all of said Pittsfield, as surities, are held and firmly bound unto M. Swain Clough of Concord in said county of Merrimack, sheriff of said county, or his successor in said office of sheriff, in the sum of fifteen hundred dollars *wo* which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 7th day of August in the year of our Lord one thousand nine hundred and three.

Whereas at the April 1903 term of the superior court of the State of New Hampshire held at said Concord in and for said county upon a *habeas corpus* proceeding pending in said court between State *ex-relatione* Martha S. Munsey and said M. Swain Clough a judgment was rendered against the said Martha S. Munsey, relator and whereas she has applied for a writ of error from the Supreme Court of the United States directed to said superior court to reverse said judgment.

Now therefore, the condition of this obligation is such, that if the said Martha S. Munsey shall prosecute her writ of error to effect, and shall appear in person before said superior court held in and for the county of Merrimack to answer to abide and perform any judgment adjudged against her in said proceeding and shall obey all orders of said superior court as to the disposition of her person

and shall not avoid then this obligation to be void otherwise to remain in full force and effect.

MARTHA S. MUNSEY. [L. S.]
GEORGE W. MUNSEY. [L. S.]
FRANK D. HUTCHINS. [L. S.]
WILLIAM J. BROOKS. [L. S.]
EVERETT JENKINS. [L. S.]

Witness:
EDWARD A. LANE.
ANNIE B. LANE.

Approved:
ROBERT M. WALLACE,
Chief Justice of the Superior Court of New Hampshire.

Filed Sept. 8, 1903.
A. J. SHURTLEFF, *Clerk.*

64 THE STATE OF NEW HAMPSHIRE, *Merrimack*, } ss:

[Seal Superior Court, New Hampshire.]

I, A. J. Shurtleff clerk of the superior court for said county, do certify that the foregoing is a true copy of the record and of all papers on file in said action.

In testimony whereof, I have hereunto set my hand and affixed the seal of said superior court, this sixth day of October A. D. 1903.

A. J. SHURTLEFF, *Clerk.*

I, Robert M. Wallace, chief justice of the superior court of the State of New Hampshire, certify that A. J. Shurtleff Esquire, whose signature is affixed to the foregoing certificate, is clerk of said superior court for the county of Merrimack, and hath the keeping of the files, records and proceedings of said court, and also of the files and records of the supreme judicial court, the court of common pleas, the superior court of judicature, the circuit court, and the supreme court, existing in this State prior to the first day of April, A. D. 1901, and is by law the proper person to make out and certify copies thereof, and that full faith and credit are and ought to be given to his acts and attestations done as aforesaid; and that his attestation above written is in due form.

In testimony whereof, I have hereunto set my hand and caused the seal of said superior court to be hereunto affixed, this sixth day of October A. D. 1903.

[Seal Superior Court, New Hampshire.]

ROBERT M. WALLACE,
Chief Justice.

65 On the same 8th. day of September 1903 the plaintiff files the following citation and return of service thereon.

[Seal Superior Court, New Hampshire.]

Attest: A. J. SHURTLEFF, *Clerk.*

66 UNITED STATES OF AMERICA, *ss:*

To M. Swain Clough, sheriff, of Concord, in the county of Merrimack and State of New Hampshire, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the superior court in and for the county of Merrimack and State of New Hampshire wherein Martha S. Munsey, of Pittsfield in said county is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Robert M. Wallace, chief justice of the superior court of the State of New Hampshire, this 8th day of September, in the year of our Lord one thousand nine hundred and three.

ROBERT M. WALLACE,
Chief Justice of the Superior Court of New Hampshire.

[Endorsed:] Filed Sept. 8, 1903.

67 On this 8th day of September, in the year of our Lord one thousand nine hundred and three, personally appeared Edward A. Lane before me, the subscriber, and makes oath that he delivered a true copy of the within citation to the within named M. Swain Clough, sheriff, defendant.

EDWARD A. LANE.

Sworn to and subscribed the 8th day of Sept. A. D. 1903.

EDMUND S. COOK,
Justice of the Peace.

Endorsed on cover: File No. 19,091. New Hampshire superior court. Term No. 126. Martha S. Munsey, plaintiff in error, *vs.* M. Swain Clough, sheriff of Merrimack county. Filed October 14th, 1903. File No. 19,091.